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# How the Revenue Act of 1962 Affects Farmer Cooperatives

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and David Volkin

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FARMER COOPERATIVE SERVICE  
U. S. DEPARTMENT OF AGRICULTURE  
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Joseph G. Knapp, Administrator

The Farmer Cooperative Service conducts research studies and service activities of assistance to farmers in connection with cooperatives engaged in marketing farm products, purchasing farm supplies, and supplying business services. The work of the Service relates to problems of management, organization, policies, merchandising, product quality, costs, efficiency, financing, and membership.

The Service publishes the results of such studies; confers and advises with officials of farmer cooperatives; and works with educational agencies, cooperatives, and others in the dissemination of information relating to cooperative principles and practices.

# How the Revenue Act of 1962 Affects Farmer Cooperatives

by Raymond J. Mischler and David Volkin<sup>1/</sup>

The Revenue Act of 1962, approved in October 1962, contains two sections (17 and 19 set forth in Appendix A) affecting the tax treatment of farmer cooperatives and their patrons and the tax reporting requirements applicable to such cooperatives.

The purpose of this publication is to make available quickly information concerning these changes in the law since they will become effective as to taxable years of the cooperatives beginning after December 31, 1962.

The report should not be considered an interpretation of the law. Until Treasury Regulations and interpretations are issued, farmer cooperatives will need to make their own interpretation with advice of counsel where necessary.

## Essential Features

### A. As to Tax Treatment

1. In general, the principle of a single tax on income generated through farmer cooperatives is preserved in this legislation.
2. Farmer cooperatives (both "exempt" and non-exempt) may reduce their gross income for Federal tax purposes to the extent of "patronage dividends" (refunds) paid --

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(a) in cash;

(b) in property (other than allocations described in (c) below); or

(c) in allocations of which at least 20 percent is paid in cash if --

(1) the patron has the option to redeem the remainder of the allocation in cash during a 90-day period after issuance and receives written notice of this option at the time he is notified of the allocation; or

(2) the patron consents in any one of the following three ways to treat this income as being received by him:

(i) By individual written consent (This statement must originally be given the cooperative before the end of the year in which the patronage occurs and applies to all patronage in that year and subsequent taxable years until the consent is revoked);

(ii) by joining or continuing as a member of a cooperative having bylaws (see 3, below) requiring members to give this consent (This consent is not revokable so long as the patron is a member); or

(iii) if neither (i) nor (ii) applies, by endorsing and cashing a check or other instrument redeemable in money representing at least 20 percent of the total patronage refund on or before a prescribed date, provided such instrument has clearly imprinted on it that endorsing and cashing it will constitute such consent.

Any such allocation is designated "qualified," and, since it is not taxable to the cooperative, must be included in the income of the patron for tax purposes when received, if the amounts arise from business activity of the patron.

3. Cooperatives desiring to use the "bylaw consent" method must amend their bylaws after the date of enactment of the law (see p. 1) and before the beginning of the fiscal year to which the new law will apply and see that each member receives a copy of that amendment before the beginning of such fiscal year. Hence, each organization filing its tax return on a calendar year basis will need to take these actions before January 1, 1963. A sample amendment is set forth in the Senate Report which is reproduced in part in Appendix B. (See p. 37)

4. The provisions of existing law as to qualification for exemption are not changed. Also, the special deductions for so-called "exempt" farmer cooperatives (amounts paid out as dividends on capital stock and amounts of non-patronage income paid out on a patronage basis in money, qualified allocations, or other property) are retained, but these deductions are now limited to allocations made within 8-1/2 months after the year in which the earnings were derived.

5. All farmer cooperatives are allowed 8-1/2 months after the close of their fiscal years beginning after December 31, 1962, in which to make their patronage allocations.

6. If neither of the two conditions set forth under 2(c) above is met, the patronage allocations do not qualify and are designated "non-qualified." The cooperative must include non-qualified allocations in its income in the year issued. A deduction may be taken for this amount by the cooperative only when the non-qualified allocation is redeemed in cash or merchandise. If at that time the cooperative is not able to make use of a deduction, a refund may be obtained with respect to the taxes paid on this amount in the year the allocation was made. The patron must take redemptions of non-qualified allocations into his income in the year of redemption, again provided such allocations do not arise out of purchases of personal, living, or family items and, hence, do not affect his income from a business.

7. The tax treatment outlined above applies not only to "exempt" and non-exempt farmer cooperatives but also to consumer cooperatives and other corporations operating on a cooperative basis. The provision does not, however, apply to exempt mutual ditch, irrigation, or REA cooperatives, to mutual savings banks, building and loan associations, and the like, or to mutual insurance companies. It also does not apply to presently taxable organizations which are engaged in furnishing electric energy, or providing telephone service, to persons in rural areas; these will continue to be treated the same as under present law.

## B. As to Reporting Requirements

1. All farmer cooperatives (both "exempt" and non-exempt) are given 8-1/2 months after the close of their fiscal years beginning after December 31, 1962, in which to file their tax returns. But non-exempt cooperatives, to be eligible for this

postponement, must (a) be under an obligation to allocate, or pay, at least 50 percent of their net patronage earnings in patronage dividends, or (b) have actually allocated, or paid, at least that percentage of their earnings in patronage dividends during the last year in which they had such earnings.

2. All farmer cooperatives must also file annual returns with the Internal Revenue Service reporting payments of interest, dividends, and "patronage dividends" of \$10 or more a year to any one person and also send a statement of these payments to the recipient of the interest, dividend, or patronage dividend indicating the annual amount so reported. The return and statement each must show the amount of payment and the name and address of the recipient. Civil penalties of \$10 a statement or information return are provided for each failure, other than for reasonable cause, to send the statement or information return to the recipient or the Government. However, each payer in any calendar year cannot be charged aggregate penalties exceeding \$25,000 for failures to file returns to the Government; or exceeding \$25,000 for failing to submit statements to recipients.

Exemption from reporting requirement. If a cooperative's primary operation is selling at retail goods and services of a type generally used for personal living or home use, it may apply to the Secretary of the Treasury for an exemption from the reporting requirement.

3. For the purposes of this reporting requirement:

(a) "Dividends" are defined as distributions by a corporation which, for purposes of the Internal Revenue Code, generally are classed as a dividend.

(b) "Patronage dividends" are defined to include all cooperative patronage refunds paid in money, qualified allocations or other property (except non-qualified allocations); amounts paid in such form by tax-exempt cooperatives with respect to earnings from business done with the United States Government or attributable to other than patronage; and non-qualified allocations which are redeemed.

We believe that the only category of "interest," as that term is defined for reporting purposes, which might apply to some cooperatives is the one which covers interest on evidences of indebtedness (such as bonds, debentures, notes and certificates) issued in a registered form, or, to the extent provided in regulations, interest on other evidences of indebtedness issued by a corporation of a type offered by a corporation to the public.



4. The reports required are (a) in the case of dividends and interest, to be made with respect to amounts paid on or after January 1, 1963; and (b) in the case of patronage dividends, with respect to amounts paid on patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after January 1, 1963. The reports and the written statements to be furnished the payees are required to be furnished to the Government and the payees on or before January 31 of the year following the calendar year for which the return was made.

## Detailed Explanation of Law

A more detailed, technical explanation of the Law is contained in Senate Report No. 1881, 87th Cong. 2d Sess. on the "Revenue Act of 1962." The pertinent parts of this report dealing with sections 17 and 19 are set forth in full in Appendix B.

We understand that the Department of the Treasury plans to issue proposed regulations on these sections promptly. These should prove helpful in answering some technical questions not clarified by the committee analysis.

If further information is needed by any cooperative, it is suggested that inquiry be directed to the Director of Internal Revenue for the district in which the cooperative files its return.

# Appendix A

## Sec. 17. Tax Treatment of Cooperatives and Patrons

(a) In General.--Chapter 1 (relating to normal taxes and surtaxes) is amended by adding at the end thereof the following new subchapter:

### "Subchapter T-Cooperatives and Their Patrons

"Part I. Tax treatment of cooperatives.

"Part II. Tax treatment by patrons of patronage dividends.

"Part III. Definitions; special rules.

#### "Part I--Tax Treatment of Cooperatives

"Sec. 1381. Organizations to which part applies.

"Sec. 1382. Taxable income of cooperatives.

"Sec. 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation.

#### "Sec. 1381. Organizations to Which Part Applies

"(a) In General.--This part shall apply to--

"(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

"(2) any corporation operating on a cooperative basis other than an organization--

"(A) which is exempt from tax under this chapter,

"(B) which is subject to the provisions of--

"(i) part II of subchapter H (relating to mutual savings banks, etc.), or

"(ii) subchapter L (relating to insurance companies), or

"(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

"(b) Tax on Certain Farmers' Cooperatives.--An organization

described in subsection (a) (1) shall be subject to the taxes imposed by section 11 or 1201.

"Sec. 1382. Taxable Income of Cooperatives

"(a) Gross Income.--Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization.

"(b) Patronage Dividends.--In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year--

"(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388 (c)), or other property (except non-qualified written notices of allocation (as defined in section 1388 (d))) with respect to patronage occurring during such taxable year; or

"(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall be treated in the same manner as an item of gross income and as a deduction therefrom.

"(c) Deduction for Nonpatronage Distributions, Etc.--In determining the taxable income of an organization described in section 1381 (a) (1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)--

"(1) amounts paid during the taxable year as dividends on its capital stock; and

"(2) amounts paid during the payment period for the taxable year--

"(A) in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

"(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

"(d) Payment Period for Each Taxable Year.--For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

"(e) Products Marketed Under Pooling Arrangements.--For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products, the patronage shall (to the extent provided in regulations prescribed by the Secretary or his delegate) be treated as patronage occurring during the taxable year in which the pool closes.

"(f) Treatment of Earnings Received After Patronage Occurred.--If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

"Sec. 1383. Computation of Tax Where Cooperative Redeems Nonqualified Written Notices of Allocation

"(a) General Rule.--If, under section 1382 (b)(2) or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

"(1) the tax for the taxable year computed with such deduction;  
or

"(2) an amount equal to--

"(A) the tax for the taxable year computed without such deduction, minus

"(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation as qualified written notices of allocation.

"(b) Special Rules.--

"(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

"(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation which is to be treated under such subsection as a qualified written notice of allocation shall be the amount paid in redemption of such written notice of allocation which is allowable as a deduction under section 1382 (b)(2) or (c)(2)(B) for the taxable year.

"(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

## "Part II--Tax Treatment by Patrons of Patronage Dividends

"Sec. 1385. Amounts includible in patron's gross income.

"Sec. 1385. Amounts Includible in Patron's Gross Income

"(a) General Rule.--Except as otherwise provided in subsection (b), each person shall include in gross income--

"(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381 (a), and

"(2) any amount, described in section 1382 (c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381 (a) (1).

"(b) Exclusion From Gross Income.--Under regulations prescribed by the Secretary or his delegate, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount--

"(1) is properly taken into account as an adjustment to basis of property, or

"(2) is attributable to personal, living, or family items.

"(c) Treatment of Certain Nonqualified Written Notices of Allocation.--

"(1) Application of Subsection.--This subsection shall apply to any nonqualified written notice of allocation which--

"(A) was paid as a patronage dividend, or

"(B) was paid by an organization described in section 1381 (a) (1) on a patronage basis with respect to earnings derived from business or sources described in section 1382 (c)(2)(A).

"(2) Basis; Amount of Gain.--In the case of any nonqualified written notice of allocation to which this subsection applies, for purposes of this chapter--

"(A) the basis of such written notice of allocation in the hands of the patron to whom such written notice of allocation was paid shall be zero,

"(B) the basis of such written notice of allocation which was acquired from a decedent shall be its basis in the hands of the decedent, and

"(C) gain on the redemption, sale, or other disposition of such written notice of allocation by any person shall, to the extent that the stated dollar amount of such written notice of allocation exceeds its basis, be considered as gain from the sale or exchange of property which is not a capital asset.

### Part III--Definitions; Special Rules

"Sec. 1388. Definitions; special rules.

#### "Sec. 1388. Definitions; Special Rules

"(a) Patronage Dividend.--For purposes of this subchapter, the term 'patronage dividend' means an amount paid to a patron by an organization to which part I of this subchapter applies--

"(1) on the basis of quantity or value of business done with or for such patron,

"(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

"(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.

"(b) Written Notice of Allocation.--For purposes of this subchapter, the term 'written notice of allocation' means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

"(c) Qualified Written Notice of Allocation.--

"(1) Defined.--For purposes of this subchapter, the term 'qualified written notice of allocation' means--

"(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of

redemption at the time he receives such written notice of allocation; and

"(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385 (a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382 (c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

"(2) Manner of Obtaining Consent.--A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by--

"(A) making such consent in writing,

"(B) obtaining or retaining membership in the organization after--

"(i) such organization has adopted (after the date of the enactment of the Revenue Act of 1962) a bylaw providing that membership in the organization constitutes such consent, and

"(ii) he has received a written notification and copy of such bylaw, or

"(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

"(3) Period for Which Consent is Effective.--

"(A) General rule.--Except as provided in subparagraph (B)--

"(i) a consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382 (e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and



"(ii) a consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382 (e)) after he received the notification and copy described in paragraph (2)(B)(ii).

"(B) Revocation, etc.--

"(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382 (e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

"(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382 (e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

"(4) Qualified Check.--For purposes of this subchapter, the term 'qualified check' means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382 (c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

"(d) Nonqualified Written Notice of Allocation.--For purposes of this subchapter, the term 'nonqualified written notice of allocation' means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or

before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

"(e) Determination of Amount Paid or Received.--For purposes of this subchapter, in determining amounts paid or received--

"(1) property (other than a written notice of allocation) shall be taken into account at its fair market value, and

"(2) a qualified written notice of allocation shall be taken into account at its stated dollar amount."

(b) Technical Amendments.--

(1) Section 521 (a) (relating to exemption of farmers' cooperatives from tax) is amended by striking out "section 522" each place it appears therein and inserting in lieu thereof "part I of subchapter T (sec. 1381 and following)".

(2) Section 522 (relating to tax on farmers' cooperatives) is hereby repealed.

(3) Section 6072 (d) (relating to time for filing income tax returns of exempt cooperative associations) is amended to read as follows:

"(d) Returns of Cooperative Associations.--In the case of an income tax return of--

"(1) an exempt cooperative association described in section 1381 (a)(1), or

"(2) an organization described in section 1381 (a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388 (a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year."

(4) The table of subchapters for chapter 1 is amended by adding at the end thereof the following:

"Subchapter T. Cooperatives and their patrons."

(5) The table of sections for part III of subchapter F of chapter 1 is amended by striking out the last line thereof.

(c) Effective Dates.--

(1) For The Cooperatives.--Except as provided in paragraph (3), the amendments made by subsections (a) and (b) shall apply to taxable years of organizations described in section 1381 (a) of the Internal Revenue Code of 1954 (as added by subsection (a)) beginning after December 31, 1962.

(2) For The Patrons.--Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1954 (as added by subsection (a)) shall apply with respect to any amount received from any organization described in section 1381 (a) of such Code, to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

(3) Application of Existing Law.--In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381 (a)--

(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1954 without regard to subchapter T of chapter 1 of such Code.

Sec. 19. Reporting of Interest, Dividend, and Patronage Dividend Payments of \$10 or More During a Year

(a) Returns Regarding Payment of Dividends.--Section 6042 (relating to returns regarding corporate dividends, earnings, and profits) is amended to read as follows:

"Sec. 6042. Returns Regarding Payments of Dividends and Corporate Earnings and Profits

"(a) Requirement of Reporting.--

"(1) In General.--Every person--

"(A) who makes payments of dividends aggregating \$10 or more to any other person during any calendar year, or

"(B) who receives payments of dividends as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the dividends so received,

shall make a return according to the forms of regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

"(2) Returns Required by the Secretary.--Every person who makes payments of dividends aggregating less than \$10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments, and the name and address of the person to whom paid.

"(b) Dividend Defined.--

"(1) General Rule.--For purposes of this section, the term 'dividend' means--

"(A) any distribution by a corporation which is a dividend (as defined in section 316); and

"(B) any payment made by a stockbroker to any person as a substitute for a dividend (as so defined).

"(2) Exceptions.--For purposes of this section, the term 'dividend' does not include--

"(A) to the extent provided in regulations prescribed by the Secretary or his delegate, any distribution or payment--

"(i) by a foreign corporation, or

"(ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

"(B) any amount described in section 1373 (relating to undistributed taxable income of electing small business corporations).

"(3) Special Rule.--If the person making any payment described in subsection (a)(1)(A) or (B) is unable to determine the portion of such payment which is a dividend or is paid with respect to a dividend, he shall, for purposes of subsection (a)(1), treat the entire amount of such payment as a dividend or as an amount paid with respect to a dividend.

"(c) Statements to be Furnished to Persons With Respect to Whom Information is Furnished.--Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing--

"(1) the name and address of the person making such return, and

"(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than \$10.

"(d) Statements to be Furnished by Corporations to Secretary.--Every corporation shall, when required by the Secretary or his delegate--

"(1) furnish to the Secretary or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder;

"(2) furnish to the Secretary or his delegate a statement of such facts as will enable him to determine the portion of the earnings and profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary or his delegate may specify; and

"(3) furnish to the Secretary or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each."

(b) Returns Regarding Payment of Patronage Dividends.--Section 6044 (relating to returns regarding patronage dividends) is amended to read as follows:

"Sec. 6044. Returns Regarding Payments of Patronage Dividends

"(a) Requirement of Reporting.--

"(1) In General.--Except as otherwise provided in this section, every cooperative to which part I of subchapter T of chapter 1 applies, which makes payments of amounts described in subsection (b) aggregating \$10 or more to any person during any calendar year, shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

"(2) Returns Required by the Secretary.--Every such cooperative which makes payments of amounts described in subsection (b) aggregating less than \$10 to any person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

"(b) Amounts Subject to Reporting.--

"(1) General Rule.--Except as otherwise provided in this section, the amounts subject to reporting under subsection (a) are--

"(A) the amount of any patronage dividend (as defined in section 1388 (a)) which is paid in money, qualified written notices of allocation (as defined in section 1388 (c)), or

other property (except nonqualified written notices of allocation as defined in section 1388 (d)),

"(B) any amount described in section 1382 (c)(2)(A) (relating to certain nonpatronage distributions) which is paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) by an organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

"(C) any amount described in section 1382 (b)(2) (relating to redemption of nonqualified written notices of allocation) and, in the case of an organization described in section 1381 (a)(1), any amount described in section 1382 (c)(2)(B) (relating to redemption of nonqualified written notices of allocation paid with respect to earnings derived from sources other than patronage).

"(2) Exceptions.--The provisions of subsection (a) shall not apply, to the extent provided in regulations prescribed by the Secretary or his delegate, to any payment--

"(A) by a foreign corporation, or

"(B) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

"(c) Exemption for Certain Consumer Cooperatives.--A cooperative which the Secretary or his delegate determines is primarily engaged in selling at retail goods or services of a type that are generally for personal, living, or family use shall, upon application to the Secretary or his delegate, be granted exemption from the reporting requirements imposed by subsection (a). Application for exemption under this subsection shall be made in accordance with regulations prescribed by the Secretary or his delegate.

"(d) Determination of Amount Paid.--For purposes of this section, in determining the amount of any payment--

"(1) property (other than a qualified written notice of allocation) shall be taken into account at its fair market value, and

"(2) a qualified written notice of allocation shall be taken into account at its stated dollar amount.

"(e) Statements to be Furnished to Persons With Respect to Whom Information is Furnished.--Every cooperative making a return under

subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing--

"(1) the name and address of the cooperative making such return, and

"(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than \$10."

(c) Returns Regarding Payment of Interest.--Subpart B of part III of subchapter A of chapter 61 (relating to information returns) is amended by adding after section 6048 (as added by section 7 (f) of this Act) the following new section:

"Sec. 6049. Returns Regarding Payments of Interest

"(a) Requirement of Reporting.--

"(1) In General.--Every person--

"(A) who makes payments of interest (as defined in subsection (b)) aggregating \$10 or more to any other person during any calendar year, or

"(B) who receives payments of interest as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the interest so received.

shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

"(2) Returns Required by the Secretary.--Every person who makes payments of interest (as defined in subsection (b)) aggregating less than \$10 to any other person during any calendar year shall, when required by the Secretary or his delegate, make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid.



"(3) Other Returns Required by Secretary.--Every corporation making payments, regardless of amounts, of interest other than interest as defined in subsection (b) shall, when required by regulations prescribed by the Secretary or his delegate, make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

"(b) Interest Defined.--

"(1) General Rule.--For purposes of subsections (a)(1) and (2), the term 'interest' means--

"(A) interest on evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a corporation in registered form, and, to the extent provided in regulations prescribed by the Secretary or his delegate, interest on other evidences of indebtedness issued by a corporation of a type offered by corporations to the public;

"(B) interest on deposits with persons carrying on the banking business;

"(C) amounts (whether or not designated as interest) paid by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares;

"(D) interest on amounts held by an insurance company under an agreement to pay interest thereon; and

"(E) interest on deposits with stockbrokers and dealers in securities.

"(2) Exceptions.--For purposes of subsections (a)(1) and (2), the term 'interest' does not include--

"(A) interest on obligations described in section 103 (a)(1) or (3) (relating to interest on certain governmental obligations);

"(B) to the extent provided in regulations prescribed by the Secretary or his delegate, any amount paid by or to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

"(C) any amount on which the person making payment is required to deduct and withhold a tax under section 1451 (relating to tax-free covenant bonds), or would be so required but for section 1451 (d) (relating to benefit of personal exemptions).

"(c) Statements to be Furnished to Persons With Respect to Whom Information is Furnished.--Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing--

"(1) the name and address of the person making such return, and

"(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than \$10."

(d) Penalties for Failure to File Information Returns.--Section 6652 (relating to failure to file certain information returns) is amended to read as follows:

"Sec. 6652. Failure to File Certain Information Returns

"(a) Returns Relating to Payments of Dividends, Interest, and Patronage Dividends.--In the case of each failure to file a statement of the aggregate amount of payments to another person required by section 6042 (a)(1) (relating to payments of dividends aggregating \$10 or more), section 6044 (a)(1) (relating to payments of patronage dividends aggregating \$10 or more), or section 6049 (a)(1) (relating to payments of interest aggregating \$10 or more), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so file the statement, \$10 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000.

"(b) Other Returns.--In the case of each failure to file a statement of a payment to another person required under authority of section 6041 (relating to certain information at source), section 6042 (a)(2)

(relating to payments of dividends aggregating less than \$10), section 6044 (a)(2) (relating to payments of patronage dividends aggregating less than \$10), section 6049 (a)(2) (relating to payments of interest aggregating less than \$10), section 6049 (a)(3) (relating to other payments of interest by corporations), or section 6051 (d) (relating to information returns with respect to income tax withheld), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing to so file the statement, \$1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed \$1,000.

"(c) Alcohol and Tobacco Taxes.--

"For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E."

(e) Penalties for Failure to Furnish Statements to Persons With Respect to Whom Returns Are Filed.--Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6677 (as added by section 7 (g) of this Act) the following new section:

"Sec. 6678. Failure to Furnish Certain Statements

"In the case of each failure to furnish a statement under section 6042 (c), 6044 (e), or section 6049 (c) on the date prescribed therefor to a person with respect to whom a return has been made under section 6042 (a)(1), 6044 (a)(1), or 6049 (a)(1), respectively, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so furnish the statement, \$10 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000."

(f) Technical Amendments.--Section 6041 (relating to information at source) is amended--

(1) by striking out, in subsection (a) thereof, "(other than payments described in section 6042 (1) or section 6045)" and inserting in lieu thereof "(other than payments to which section

6042 (a)(1), 6044 (a)(1), or 6049 (a)(1) applies, and other than payments with respect to which a statement is required under the authority of section 6042 (a)(2), 6044 (a)(2), 6045, 6049 (a)(2), or 6049 (a)(3))"; and

(2) by striking out subsection (c) thereof.

(g) Clerical Amendments.--

(1) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended--

(A) by striking out

"Sec. 6042. Returns regarding corporate dividends, earnings, and profits."

and inserting in lieu thereof

"Sec. 6042. Returns regarding payments of dividends and corporate earnings and profits.";

(B) by striking out

"Sec. 6044. Returns regarding patronage dividends."

and inserting in lieu thereof

"Sec. 6044. Returns regarding payments of patronage dividends.";

and

(C) by adding at the end of such table the following:

"Sec. 6049. Returns regarding payments of interest."

(2) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following:

"Sec. 6678. Failure to furnish certain statements."

(h) Effective Dates.--

(1) Dividends and Interest.--The amendments made by this section shall apply to payments of dividends and interest made on or after January 1, 1963.

(2) Patronage Dividends.--The amendments made by this section shall apply to payments of amounts described in section 6044 (b) of the Internal Revenue Code of 1954 made on or after January 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after January 1, 1963.

# Appendix B

## Section 17

### Tax Treatment of Cooperatives and Patrons

(a) In general.--Subsection (a) of section 17 of the bill amends the Internal Revenue Code of 1954 by adding to chapter 1 a new subchapter T (relating to cooperatives and their patrons) consisting of part I, tax treatment of cooperatives, part II, tax treatment by patrons of patronage dividends, and part III, definitions and special rules.

#### Part I--Tax Treatment of Cooperatives

Part I of subchapter T consists of section 1381, organizations to which such part applies, section 1382, taxable income of cooperatives, and section 1383, computation of tax where cooperative redeems nonqualified written notices of allocation.

#### Section 1381. Organizations to Which Part Applies

(a) In general.--Subsection (a) of section 1381 provides that part I of subchapter T is to apply to any organization which is exempt from tax under section 521 (relating to exemption of farmers' cooperatives) and to any corporation operating on a cooperative basis. Part I is not applicable, however, to any organization (1) which is exempt from income taxes (other than an exempt farmers' cooperative described in sec. 521); (2) which is subject to the provisions of part II of subchapter H (relating to mutual savings banks, etc.); (3) which is subject to the provisions of subchapter L (relating to insurance companies); or (4) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas. Thus, part I of the new subchapter T does not apply to any cooperative exempt from tax under section 501. Nor does it apply to a cooperative which generates or transmits electricity for use by persons living in rural areas.

(b) Tax on certain farmers' cooperatives.--Subsection (b) of section 1381 provides that the farmers' cooperatives described in section 521 are subject to corporate income taxes. This is the same provision as the provision presently contained in section 522.

### Section 1382. Taxable Income of Cooperatives

(a) Gross income.--Subsection (a) of section 1382 provides that, except as provided in section 1382(b), all cooperatives to which part I of the new subchapter T applies must compute gross income without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) for amounts allocated or distributed to patrons out of net earnings.

(b) Patronage dividends.--Subsection (b)(1), applicable to both taxable and exempt cooperatives, provides that in determining the taxable income of a cooperative there are not to be taken into account certain patronage dividends paid in money, qualified written notices of allocation, or other property (other than nonqualified written notices of allocation). Under this subsection, the patronage dividends which are not to be taken into account in computing taxable income for a taxable year are those which are paid during the payment period for that taxable year (as defined in sec. 1382(d)) with respect to patronage occurring during such taxable year. For this purpose, under section 1382(d) a patronage dividend shall be treated as paid in money during the payment period to the extent it is paid by a qualified check (as defined in sec. 1388(c)(4)) issued during the payment period and endorsed and cashed on or before the 90th day after the close of the payment period.

Under subsection (b)(2), also applicable to both taxable and exempt cooperatives, certain amounts paid in money or other property (except written notices of allocation) in redemption of nonqualified written notices of allocation are not to be taken into account in determining the taxable income of a cooperative. The amounts described in subsection (b)(2) which are not to be taken into account for a taxable year are those which are paid during the payment period for that taxable year in redemption of nonqualified written notices of allocation which were paid as patronage dividends during the payment period for the taxable year during which the patronage occurred.

Subsection (b) also provides that amounts described in such subsection which are not taken into account in determining taxable income are to be treated for purposes of the 1954 Code in the same manner as items of gross income and corresponding deductions therefrom. Thus, for example, in determining the amount omitted from gross income for purposes of section 6501(e) (relating to period of limitations where there are omissions from gross income), amounts paid as patronage dividends (though not required to be taken into account in determining taxable income) are to be treated as amounts properly includible in gross income.

(c) Deduction for nonpatronage distributions, etc.--In the case of a farmers' cooperative which is exempt under section 521, certain deductions (in addition to other deductions allowed under ch. 1) are allowed under subsection (c) of the new section 1382. Subsection (c)(1) allows a deduction for dividends paid by such a cooperative during the taxable year on its capital stock. This deduction is the same in substance as that currently allowed under section 522(b)(1)(A).

Subsection (c)(2)(A) allows a deduction for amounts paid (or treated as paid under sec. 1382(d)) during the payment period for a taxable year, on a patronage basis, out of earnings of that taxable year derived either from business done for the United States or from sources other than patronage. A deduction is allowed by subsection (c)(2)(A), however, only for amounts paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation). For purposes of the deduction allowed by subsection (c)(2)(A), amounts are considered as paid on a patronage basis if they are paid in proportion, insofar as is practicable, to the amount of business done by or for patrons during the period to which such amounts are attributable.

In addition to the deductions allowed by subsections (c) (1) and (c)(2)(A), a deduction is allowed under subsection (c)(2)(B) for amounts paid in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was previously paid during the payment period for a taxable year on a patronage basis to a patron out of earnings derived during that taxable year either from business done for the United States or from sources other than patronage. A deduction under subsection (c)(2)(B) will be allowed for a taxable year only for amounts paid during the payment period for that taxable year.



For purposes of the new subchapter T, a written notice of allocation is considered paid when it is issued to the patron. Amounts paid in redemption of a nonqualified written notice of allocation which are in excess of the stated dollar amount of such written notice of allocation and which in effect constitute interest may be deducted by the cooperative as interest. These excess amounts will be treated by the distributee as interest and not as a patronage dividend.

(d) Payment period for each taxable year.--Subsection (d) of section 1382 contains the definition of the "payment period for each taxable year." It provides that the payment period for any taxable year is the period beginning with the 1st day of such taxable year and ending with the 15th day of the 9th month following the close of such year. Thus, a cooperative has 8-1/2 months after the close of a taxable year in which to pay patronage dividends out of the net earnings from patronage occurring during that taxable year. Any patronage dividend which it pays after that time must be taken into account by the cooperative in computing its taxable income; and the cooperative will be allowed no subsequent adjustment for any amount it pays in redemption of a written notice of allocation which was paid as a part of such patronage dividend. The same general rules apply with respect to non-patronage distributions made on a patronage basis. Subsection (d) also provides that, for purposes of section 1382(b)(1) and (c)(2)(A), a qualified check shall be treated as an amount paid in money during the payment period for a taxable year if it is issued during such payment period and is endorsed and cashed on or before the 90th day after the close of such payment period.

(e) Products marketed under pooling arrangements.--Subsection (e) of section 1382 provides a special rule for determining, for purposes of section 1382(b), when the patronage is considered to have occurred in the case of a pooling arrangement for the marketing of products. Under this rule, the patronage will (to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate) be treated as occurring during the taxable year in which the pool closes. For example, farmer A delivers to the X cooperative 100 bushels of wheat on August 15, 1963, at which time he receives a "per bushel" advance. On October 15, 1963, he receives an additional "per bushel" payment. The pool sells some of its wheat in 1963 and the rest in January of 1964. The pool is closed on February 15, 1964. For purposes of section 1382(b), A's patronage is considered as occurring in 1964.

Section 1382 has no effect on, and is not intended to change, existing rules with respect to the time at which items are taken into account in computing the cooperative's gross income. For example, a tobacco stabilization cooperative may be required by the Commodity Credit Corporation to apply a portion of its proceeds from the sale of tobacco against loans on other crop years. In a letter to the Department of Agriculture dated October 11, 1955, the Internal Revenue Service held that this portion of the proceeds was not includible in the cooperative's gross income until the cooperative had an unrestricted right to such portion. Section 1382 will in no way change this holding. Under section 1382(f), the Secretary of the Treasury or his delegate may provide by regulations that, in such a case, the patronage to which this portion of the proceeds relates is to be considered to have occurred during the taxable year when the cooperative first had an unrestricted right to such portion. This will permit the cooperative to pay these proceeds out as patronage dividends during the payment period for such later year. If the conditions of section 1382(b) are met, such patronage dividends need not be taken into account in determining the taxable income of the cooperative for such later year. Section 1382(f) permits the Secretary of the Treasury or his delegate to provide similar rules as to when patronage is considered to have occurred in other cases when earnings are includible in the gross income of a cooperative for a taxable year after the patronage occurred.

Section 1383. Computation of Tax Where Cooperative Redeems Non-qualified Written Notices of Allocation

Section 1383 provides a special rule for computing a cooperative's tax for a year when it redeems nonqualified written notices of allocation.

(a) General rule.--Section 1383(a) provides that if, for a taxable year, a cooperative is allowed a deduction under section 1382 (b)(2) or (c)(2)(B) for amounts it pays in redemption of nonqualified written notices of allocation, then its tax for that year shall be whichever of the following is the smaller:

(1) The tax for the taxable year computed with the deduction for the amounts paid in redemption of the nonqualified written notices of allocation, or

(2) An amount equal to--

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under chapter 1 for the prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation as qualified written notices of allocation.

(b) Special rules.--Section 1383(b) provides three special rules applying to the alternative tax computations based on the decrease in tax for the prior taxable years. Under section 1383(b)(1), if the decrease in tax for the prior taxable year (or years) exceeds the tax for the current year (computed without any deduction for amounts paid in redemption of nonqualified written notices of allocation), the excess is to be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the current taxable year, and is to be refunded or credited in the same manner as if it were an overpayment for the current taxable year.

Section 1383(b)(2) provides that, for purposes of computing the decrease in tax for the prior taxable year, the nonqualified written notices of allocation which are treated as qualified written notices of allocation are to be considered to have a stated dollar amount equal to the amount paid in redemption of such written notices of allocation to the extent such amount is allowable as a deduction under section 1382(b)(2) or (c)(2)(B).

Section 1383(b)(3) provides that if the alternative tax computation provided by section 1383(a)(2) is used, then the deduction otherwise allowable for the current year by reason of the redemption of nonqualified written notices of allocation is not to be allowed for any purpose under the 1954 Code.

The application of section 1383 may be illustrated by the following example:

The X cooperative (which reports its income on a calendar year basis) pays patronage dividends of \$100 in nonqualified written notices of allocation on February 1, 1964, with respect to patronage occurring in 1963. Since the patronage dividends were paid in nonqualified written notices of allocation, the X cooperative must include the \$100 in gross income and is not allowed a deduction for that amount for 1963. On December 1, 1966, the X cooperative redeems these nonqualified written notices of allocation for \$50. Section 1382(b)(2) permits, in effect, the X cooperative to deduct that \$50 from gross income in determining its taxable income for 1966. However, if the X cooperative otherwise has a loss for 1966 and, therefore, owes no tax for that year, it may make the computation under the alternative method provided in section 1383(a)(2). Under this alternative, it would be permitted a credit or refund of

the decrease in tax for 1963 which results from recomputing the 1963 tax liability as if patronage dividends of \$50 had been paid for 1963 in qualified written notices of allocation. If this alternative is used, the X cooperative cannot then use the \$50 deduction otherwise allowable for 1966 to increase its net operating loss carryback or carryforward. If the X cooperative also redeems on December 1, 1966, nonqualified written notices of allocation which were paid as patronage dividends on February 1, 1965, with respect to patronage occurring in 1964, it would be allowed a credit or refund for the decrease in tax for 1964. It could not, however, apply one method for computing the tax with respect to the redemption in 1966 of the nonqualified written notices of allocation paid in 1964 and the other method with respect to the redemption in 1966 of the nonqualified written notices of allocation paid in 1965.

## Part II--Tax Treatment by Patrons of Patronage Dividends

Part II of subchapter T, consisting of section 1385, deals with the patron's tax treatment of patronage dividends and amounts paid by an exempt farmers' cooperative from nonpatronage earnings.

### Section 1385. Amounts Includible in Patron's Gross Income

(a) General rule.--Subsection (a)(1) requires the patron to include in gross income the amount of any patronage dividend (other than one described in sec. 1385(b) received during the taxable year from a taxable or an exempt cooperative to which part I of subchapter T applies, if paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation). Subsection (a)(2) requires inclusion in the gross income of the patron of distributions (other than those paid in nonqualified written notices of allocation) paid on a patronage basis by a farmers' cooperative exempt under section 521 with respect to earnings derived either from business done for the United States or from sources other than patronage. The patron must include patronage dividends in gross income for the taxable year during which they are received, even though the adjustment in computing taxable income of the cooperative was made for its preceding taxable year because they were paid during the payment period for such preceding taxable year. Patronage dividends are includible in the patron's gross income under section 1385 even if the cooperative is not permitted any adjustment for such patronage dividends because they were not paid during the payment period for the taxable year in which the patronage occurred.

(b) Exclusion from gross income.--Subsection (b)(1) of section 1385 excludes from gross income a patronage dividend, or an amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was previously paid as a patronage dividend, which is properly taken into account as an adjustment to basis of property. For example, if a patronage dividend is attributable to the purchase of a capital asset or property used in a trade or business, such patronage dividend will not be included in the distributee's gross income but will reduce the basis of such asset or property. Subsection (b)(2) provides that a patronage dividend, or an amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was previously paid as a patronage dividend, which is paid to a patron with respect to the purchase of a personal, rather than a business, expense item, is not includible in gross income. These provisions are to be applied under regulations prescribed by the Secretary of the Treasury or his delegate.

(c) Treatment of certain nonqualified written notices of allocation.--Subsection (c) (1) of section 1385 describes the kind of nonqualified written notices of allocation to which section 1385(c) applies. This subsection applies to a nonqualified written notice of allocation which was paid as a patronage dividend by a taxable or an exempt cooperative, and to a nonqualified written notice of allocation which was paid on a patronage basis by a farmers' cooperative exempt under section 521 out of earnings derived either from business done for the United States or from sources other than patronage.

Subsection (c)(2)(A) of section 1385 provides that such a nonqualified written notice of allocation is to have a zero basis in the hands of the patron to whom it was paid. Subsection (c)(2)(B) of section 1385 provides that the basis of a nonqualified written notice of allocation described in subsection (c)(1) acquired from a decedent is to be its basis in the hands of the decedent. Any amount which the beneficiary is required to report as ordinary income on the redemption, sale, or other disposition of such written notice of allocation is income in respect of a decedent under section 691 of the code. Subsection (c)(2)(C) provides that any gain on the redemption, sale, or other disposition of a nonqualified written notice of allocation described in subsection (c)(1) is to be ordinary income to the extent that its stated dollar amount exceeds its basis. This is true whether such gain is realized by the patron who received the nonqualified written notice of allocation or any subsequent holder. For example, farmer A receives a patronage dividend paid in the form of a nonqualified written notice of allocation which is attributable to the sale of his crop to the X cooperative. The stated dollar amount of the nonqualified written notice of allocation is \$100. The basis of the written notice of

allocation in the hands of farmer A is zero and he must report any amount up to \$100 received by him on its redemption, sale, or other disposition as ordinary income. If farmer A gives the written notice of allocation to his son B, B takes farmer A's (the donor's) basis which is zero, and any gain up to \$100 which B later realizes on its redemption, sale, or other disposition is ordinary income. Similarly, if A dies before realizing any gain on the nonqualified written notice of allocation, B, his legatee, has a zero basis for such written notice of allocation and any gain up to \$100 which he then realizes on its redemption, sale, or other disposition is also ordinary income. Any amounts realized on the redemption, sale, or other disposition of such nonqualified written notice of allocation in excess of \$100 will be treated under the applicable provisions of the code. These provisions in section 1385(c)(2)(C) are not intended to reflect in any way on how gain on the redemption, sale, or other disposition of a written notice of allocation would be treated under existing law.

### **“Part III--Definitions. Special Rules**

Part III of subchapter T, consisting of section 1388, defines "patronage dividend," "written notice of allocation," "qualified written notice of allocation," "qualified check," and "nonqualified written notice of allocation," and provides special rules for determining amounts paid or received.

#### Section 1388. Definitions; Special Rules

(a) Patronage dividend.--Under subsection (a) of section 1388, the term "patronage dividend" means an amount paid to a patron by a cooperative to which part I of subchapter T applies (1) on the basis of quantity or value of business done with or for such patron, (2) under an obligation to pay such amount, which obligation existed before the cooperative received the amount, and (3) which is determined by reference to the net earnings of the cooperative from business done with or for its patrons. It is made clear that there are not to be included as patronage dividends any amounts which are out of earnings other than from business done with or for patrons, or any amounts paid to patrons which are attributable to the patronage of other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. Thus, if a cooperative does not pay any patronage dividends to nonmembers, any portion of the amounts paid to members which is out of net earnings from patronage with nonmembers, and

which would have been paid to the nonmembers if all patrons were treated alike, is not a patronage dividend.

(b) Written notice of allocation.--The term "written notice of allocation" is defined in subsection (b) of section 1388 to mean any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him, and the portion thereof, if any, which constitutes a patronage dividend.

This definition is applicable both to written notices of allocation paid as patronage dividends and to written notices of allocation paid with respect to nonpatronage earnings or earnings from business done for the United States.

(c) Qualified written notice of allocation.--Subsection (c)(1) of section 1388 contains the definition of "qualified written notice of allocation". Subsection (c)(1)(A) provides, in the case of both taxable and exempt cooperatives, that the term "qualified written notice of allocation" includes a written notice of allocation which the patron may redeem in cash, at its stated dollar amount, at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date. The patron must be notified by the cooperative, in writing, at the time he receives the written notice of allocation, of this right of redemption. It is intended that this notice must be given separately to each patron and not in the form of a notice in a newspaper or posted at the cooperative's headquarters. If the patron does not exercise his option to redeem the written notice of allocation, he must, nevertheless, take it into account, at its stated dollar amount, in the manner provided in section 1385(a).

Subsection (c)(1)(B) of section 1388, also applicable to both taxable and exempt cooperatives, provides that the term "qualified written notice of allocation" also includes a written notice of allocation which the patron has consented to take into account at its stated dollar amount in the manner provided in section 1385(a). This consent must be made in the manner provided in subsection (c)(2) of section 1388.

Subsection (c)(1) provides, however, that a written notice of allocation is not "qualified" unless at least 20 percent of the patronage dividend, or the payment with respect to nonpatronage earnings or earnings from business done for the United States, of which it is a part, is paid in money or by qualified check (as defined in sec. 1388(c)(4)). Thus, even though the patron has

consented to take the face amount of a written notice of allocation paid as part of a patronage dividend into account as provided in section 1385(a), or such allocation is redeemable for cash at any time within a period of at least 90 days, such written notice of allocation will not be qualified unless at least 20 percent of the patronage dividend is paid in money or by qualified check.

Subsection (c)(2) of section 1388 provides the three different ways in which the consent to take written notices of allocation into account as provided in section 1385(a) may be made. The first way is to make such consent in writing. (This does not include a consent made by endorsing and cashing a qualified check which is described in subsection (c)(2)(C).) The written consent must be made by the patron before the close of the cooperative's taxable year during which the patronage to which the written notice of allocation is attributable occurred. Such consent is, under subsection (c)(3)(A)(i), effective with respect to all patronage occurring during the taxable year of the cooperative in which such consent is made and, unless revoked as provided in subsection (c)(3)(B)(i), all subsequent taxable years. Subsection (c)(3)(B)(i) provides that such a consent may be revoked by the patron at any time. The revocation must be in writing and filed with the cooperative. Thus, any such written consent which is, by its terms, irrevocable is not a consent that would qualify a written notice of allocation under subsection (c)(1)(B). A revocation is only effective with respect to patronage occurring after the close of the cooperative's taxable year during which the revocation is filed with it. In the case of a patron participating in a pooling arrangement described in section 1382(e), a written consent may be made at any time before the close of the cooperative's taxable year during which the pool closes. Any subsequent revocation filed by the patron, however, would not be effective with respect to that pool.

Subsection (c)(2)(B) describes another way the consent can be given by a patron who is a member (or prospective member) of the cooperative. In this case, the consent may be made by the patron by obtaining or retaining membership in the cooperative after--

(A) the cooperative has adopted a bylaw providing that membership in the cooperative constitutes such consent, and

(B) he has received a written notification and copy of such bylaw.

The bylaw described in (A) must be adopted by the cooperative after the date of enactment of this bill (the Revenue Act of 1962) and must contain a clear statement that membership in the cooperative



constitutes the prescribed consent. The following is an example of a bylaw provision which would meet this requirement:

Each person who hereafter applies for and is accepted to membership in this cooperative and each member of this cooperative on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to his patronage occurring after \_\_\_\_\_, which are made in written notices of allocation (as defined in 26 U.S.C. 1388) and which are received by him from the cooperative, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which such written notices of allocation are received by him.

Before a patron shall be considered to have consented under this second alternative, he must receive the written notification and the copy of the bylaw, as provided in (B) above. In the case of a new member, he must receive the notification and the copy of the bylaw before he becomes a member. The written notification must inform the patron that this bylaw has been adopted and of its significance. It is intended that the notification and copy of the bylaw must be given to each individual separately and not in the form of a notice in a newspaper or posted at the cooperative's headquarters.

Under subsection (c)(3)(A)(ii) of section 1388, this alternative consent will be effective with respect to all patronage of the member-patron occurring after he receives the notification and copy of the bylaw provision. In the case of a pooling arrangement described in section 1382(e), the consent will only be effective with respect to the member's actual patronage occurring after he receives the notification and copy of the bylaw and shall not be effective with respect to any of his patronage under the pool before this time. Subsection (c)(3)(B)(ii) provides that this alternative consent will not apply to any patronage of the patron after he ceases to be a member of the cooperative or after the bylaw provision is repealed by the cooperative. In the case of a pooling arrangement, this refers to the time when the patronage actually occurred. Thus, if the patron resigns his membership in the cooperative during the period a pool is in operation, he will not be considered to have consented with respect to any of his patronage under the pool after the date of his resignation.

Subsection (c)(2)(C) describes the third way that a patron may consent to take a written notice of allocation into account as provided in section 1385(a). Under this alternative, the consent may

be given by endorsing and cashing a qualified check (as defined in subsec. (c)(4)) which is paid as part of the same patronage dividend, or the same distribution with respect to nonpatronage earnings, as is the written notice of allocation.

Subsection (c)(4) defines a qualified check to mean only a check, or other instrument redeemable in money, (1) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a patron who has not already given consent in the manner provided in subsection (c)(2)(A) or (B) with respect to such patronage dividend or such payment, and (2) on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to take into account, as provided in the Federal income tax laws, the stated dollar amount of any written notices of allocation which are paid as a part of the patronage dividend or payment of which such check (or other instrument) is also a part. The term "qualified check" does not include a check or other instrument which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than one described in sec. 1388(c)(1)(A)). Thus a check which is paid as part of a patronage dividend is not a "qualified check" (even though it has the above-described statement imprinted on it) if the remaining portion of such patronage dividend is paid in cash or if the only written notices of allocation included in the distribution are redeemable allocations which are considered qualified under section 1388(c)(1)(A). Under this definition, it is not necessary that a qualified check be in the form of an ordinary check which is payable through the banking system. It may, for example, be in the form of an instrument which may be redeemed by the cooperative for money.

In order to constitute consent, a qualified check must be cashed by the payee on or before the 90th day after the close of the payment period for the taxable year of the cooperative for which the patronage dividend, or the distribution with respect to nonpatronage earnings, is paid. Thus, in the case of a cooperative on a calendar year basis, which pays patronage dividends for 1963 in qualified checks and written notices of allocation, only those patrons who cash their qualified checks on or before December 14, 1964, shall be considered to have consented under subsection (c)(2)(C) with respect to the written notices of allocation. For purposes of determining whether or not the cooperative is required to take the amount of a qualified check into account in computing its taxable income under section 1382(b)(1) or (c)(2)(A), section 1382(d) provides that those qualified checks which are issued during the payment period for the taxable year and which are endorsed and cashed on or before the 90th day after the close of such period

shall be treated as amounts paid in money during such payment period. Thus, in the above example, if the qualified checks were issued on or before September 15, 1964, then the amount of those checks which are cashed on or before December 14, 1964, shall be treated, for purposes of section 1382(b)(1), as patronage dividends paid in money during the payment period for 1963.

Under the above example, in the case of a patron who has not cashed his qualified check by December 14, 1964, there is no consent and both the written notice of allocation and the qualified check constitute nonqualified written notices of allocation. Therefore, as of that date, the patron is not required to include any amount in gross income, and the cooperative is allowed no deduction, with respect to either the qualified check or the written notice of allocation. If the payee cashes his check on January 2, 1965, he shall treat the amount received for tax purposes as an amount received on January 2, 1965, in redemption of a nonqualified written notice of allocation. Likewise, the cooperative shall treat the amount of the check as an amount paid on January 2, 1965, in redemption of a nonqualified written notice of allocation. The written notice of allocation itself will be treated in the same manner as any other nonqualified written notice of allocation; that is, nothing will be includible in the gross income of the patron and no deduction will be allowed the cooperative until the written notice of allocation is redeemed.

Since the term "qualified check" includes only checks or other instruments issued to patrons who have not otherwise consented with respect to the distribution of which the check or other instrument is a part, the endorsing and cashing of a check which contains a statement that this constitutes consent by a patron of a cooperative shall have no effect as a consent if such patron is already considered as having consented by reason of subsection (c)(2) (A) or (B) with respect to the distribution of which such check is a part.

Endorsing and cashing a qualified check shall be considered a consent only with respect to the written notices of allocation which are paid as part of the same distribution as is the qualified check.

(d) Nonqualified written notice of allocation.--Subsection (d) of section 1388 defines "nonqualified written notice of allocation" to mean (1) a written notice of allocation which is not described in subsection (c) and (2) a qualified check which is not cashed on or before the close of the 90th day after the close of the payment period for the taxable year (of the cooperative) for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received.--Subsection (e) of section 1388 provides that, for purposes of the new subchapter T, in determining amounts paid or received: (1) Property, other than a written notice of allocation, is to be taken into account at its fair market value, and (2) a qualified written notice of allocation is to be taken into account at its stated dollar amount. Thus, if a cooperative pays part of its patronage dividends in qualified written notices of allocation, and the requirements of section 1382 are met, the cooperative will not be required to take the stated dollar amounts of such written notices of allocation into account in determining its taxable income. Conversely, the patron receiving a qualified written notice of allocation must take it into account, as provided in section 1385(a), at its stated dollar amount. If a cooperative pays a patronage dividend in nonqualified written notices of allocation, it is required to include the stated dollar amount thereof in gross income and is allowed no deduction (and the patrons are not required to include such amount in gross income) at the time such written notices of allocation are paid (or received).

## Section 17

### Tax Treatment of Cooperatives and Patrons (Continued)

(b) Technical amendments.--Subsection (b) of section 17 of the bill makes certain technical amendments to reflect the provisions of the new subchapter T.

Paragraph (1) amends section 521(a) (relating to exemption of farmers' cooperatives from tax) to insert references to part I of the new subchapter T.

Paragraph (2) repeals section 522 (relating to tax on farmers' cooperatives exempt under sec. 521).

Paragraph (3) amends section 6072(d) (relating to time for filing income tax returns of exempt cooperative associations) to extend the time for filing income tax returns of certain taxable cooperatives. Under this amendment, these cooperatives need not file returns for a taxable year until the 15th day of the 9th month following the close of such taxable year. Under existing law, these nonexempt cooperatives must file returns for a taxable year on or before the 15th day of the 3d month following the close of such taxable year. The taxable cooperatives which may take advantage of this filing date provision are those described in section 1381(a)(2) which either (1) are under an obligation to pay patronage dividends in an amount equal to 50 percent or more of

net earnings from business done with or for patrons, or (2) actually paid patronage dividends in such an amount out of net earnings from business done with or for patrons during the most recent taxable year for which they had such net earnings. Under existing law, exempt farmers' cooperatives are not required to file returns for a taxable year until the 15th day of the 9th month following the close of such taxable year, and this rule is not changed.

(c) Effective dates.--Subsection (c) of section 17 of the bill prescribes the effective dates for subsections (a) and (b).

Paragraph (1) of subsection (c) provides that, in the case of cooperatives, the amendments made by subsections (a) and (b) will, except as provided in paragraph (3), apply to taxable years of organizations described in section 1381(a) beginning after December 31, 1962.

Paragraph (2) of subsection (c) provides that, in the case of patrons, section 1385 will, except as provided in paragraph (3), apply with respect to any amount received from any organization described in section 1381(a), to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

Paragraph (3) of subsection (c) provides that, in the case of any money, written notices of allocation, or other property, paid by any organization described in section 1381(a)--

(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notices of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notices of allocation) by any cooperative or patron is to be made under the 1954 Code without regard to the new subchapter T. For example, if a cooperative pays a patronage dividend during its taxable year beginning January 1, 1963, out of net earnings for its taxable year ending on December 31, 1962, the tax treatment of such a patronage dividend (including the determination of when it is considered paid) would be determined under existing law. Furthermore, the provisions of section 1382(b)(2) and (c)(2)(B) (relating to deduction for amounts paid in redemption of certain nonqualified written notices of allocation) and section 1383 (relating to computation of

tax where a cooperative redeems nonqualified written notices of allocation) are not applicable to amounts paid in redemption of a written notice of allocation which was paid (whether before or after January 1, 1963) with respect to patronage occurring before such date.

## Section 19

### Reporting of Interest, Dividend, and Patronage

#### Dividend Payments of \$10 or More During a Year

Section 19 of the bill as passed by the House provided a system for the withholding of tax at the source on interest, dividends, and patronage dividends. Your committee has struck out those provisions and has inserted provisions which would require annual information reporting of certain dividend, interest, or patronage dividend payments. Such reporting is to be required with respect to payments to any person when they aggregate \$10 or more in amount to such person in any calendar year. In addition, your committee has added provisions requiring that payers of interest, dividends, or patronage dividends furnish to the recipients of these amounts annual statements showing the amounts paid to them as reported on the information returns filed with the Government. New penalty provisions are provided by your committee for failure to file information returns with respect to payments of interest, dividends, or patronage dividends and for failure to furnish to a recipient of such payments an annual statement of such payments.

(a) Returns regarding payment of dividends and corporate earnings and profits.--Subsection (a) of the new section 19 completely revises section 6042 of the 1954 Code (relating to returns regarding corporate dividends, earnings, and profits). Under existing section 6042 of the code the Secretary of the Treasury or his delegate has discretionary authority to require corporations to make information returns, with respect to their payments of dividends, showing the name and address of, the number of shares owned by, and the amount of dividends paid to, each shareholder. In addition, the Secretary of the Treasury or his delegate may require corporations to furnish other specified information, such as statements of accumulated earnings and profits, the names and addresses of shareholders who would be entitled to such earnings and profits if they were distributed, and the amounts that would be payable to each.

Section 6042. Returns Regarding Payment of Dividends and Corporate Earnings and Profits

(a) Requirement of reporting.--Subsection (a)(1) of the new section 6042 requires every person making payments of dividends aggregating \$10 or more to any other person during any calendar year to file an information return with respect to such payments. In addition, such new subsection requires persons receiving payments of dividends in the capacity of nominee to report payments by them aggregating \$10 or more during any calendar year to any other person with respect to the dividends so received. Thus, if an individual has his stock registered in the name of his stockbroker, the stockbroker must file an information return showing the name and address of the individual and the amount of dividends he received and paid over to, or credited to the account of, such individual during the calendar year if they amount to \$10 or more. The return to be filed under section 6042(a)(1) is to be made according to the forms or regulations prescribed by the Secretary of the Treasury or his delegate and is to set forth the name and address of the person to whom the payments were made and the aggregate amount of such payments.

Section 6042 only requires reporting with respect to dividends paid by one "person" to another "person." For purposes of this section (and secs. 6044, as amended by the bill, and 6049, as added by the bill) the term "person" has the meaning assigned to it by section 7701(a)(1) of the code. Under that section the term "person" does not include the United States, a State, a foreign government, a political subdivision of a State or foreign government, or an international organization. Therefore, dividends (and patronage dividends and interest) paid by or to one of these entities need not be reported. The person required to report under subsection (a)(1) is the person on whose capital stock the dividends are paid. The term "payment" includes constructive payment. Thus, dividends which are credited to the account of a shareholder by a mutual fund must be reported by the fund if they aggregate \$10 or more during the calendar year. The term "nominee" does not include a partner acting with respect to property of a partnership of which he is a member or a person who, acting in the capacity of trustee, holds record title to trust property. The general rules discussed in this paragraph are also applicable with respect to the new reporting requirements for interest and patronage dividends.

Subsection (a)(2) of the new section 6042 gives the Secretary of the Treasury or his delegate discretion to require information returns to be filed with respect to dividend payments aggregating less than \$10 during a calendar year.

(b) Dividend defined.--Subsection (b)(1) of the new section 6042 defines the term "dividend" for purposes of section 6042 to mean: (A) any distribution by a corporation which is a dividend as defined in section 316 of the code; and (B) any payment made by a stockbroker to any person as a substitute for a dividend (as so defined). Reporting is required whether a dividend is paid in cash or in other property. A dividend paid by an insurance company to a policyholder, other than a dividend upon the capital stock of such insurance company, is not a dividend within the meaning of section 6042(b)(1).

Subsection (b)(2) of the new section 6042 provides that the term "dividend," for purposes of section 6042, does not include: (A) to the extent provided in regulations prescribed by the Secretary of the Treasury, or his delegate, any distribution or payment (i) by a foreign corporation, or (ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; or (B) any amount described in section 1373 of the code (relating to undistributed taxable income of electing small business corporations).

Subsection (b)(3) provides that if the person making any payment described in subsection (a)(1) is unable to determine the portion of the payment which is a dividend or is paid with respect to a dividend, the total amount of the payment is to be treated as a dividend for purposes of information reporting required by subsection (a)(1). Thus, if a corporation is unable to determine what portion of its distributions to its shareholders during the calendar year is paid out of earnings and profits, the total amount of the distributions must be treated as a dividend.

(c) Statements to be furnished to persons with respect to whom information is furnished.--Subsection (c) of the new section 6042 requires every person making a return under subsection (a)(1) of section 6042 to furnish to each person whose name is set forth in such return a written statement showing (1) the name and address of the person making the return, and (2) the aggregate amount paid to the person as shown on the return. Such written statement is to be furnished to the person on or before January 31 of the year following the calendar year for which the return was made. However, no statement is required to be furnished to any person under this subsection if the aggregate amount of payments to the person as shown on the return made under subsection (a)(1) is less than \$10.

(d) Statements to be furnished by corporations to Secretary.--Subsection (d) of the new section 6042 provides that every corporation shall, when required by the Secretary of the Treasury or his delegate--



(1) furnish to the Secretary of the Treasury or his delegate a statement stating the name and address of each shareholder, and the number of shares owned by each shareholder;

(2) furnish to the Secretary of the Treasury or his delegate a statement of such facts as will enable him to determine the portion of the earnings and profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary of the Treasury or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary of the Treasury or his delegate may specify; and

(3) furnish to the Secretary of the Treasury or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

These provisions are substantially the same as provisions contained in the present section 6042.

## Section 19

### Reporting of Interest, Dividend, and Patronage Dividend Payments of \$10 or More During a Year (Continued)

(b) Returns regarding payments of patronage dividends.--Subsection (b) of the new section 19 amends section 6044 of the 1954 Code, to revise the provisions relating to information returns which must be filed by cooperatives.

Under existing law, a cooperative must file an information return with respect to patronage dividends which it pays to a patron during a calendar year if the aggregate is \$100 or more. Existing law also gives the Secretary of the Treasury or his delegate authority to require such information returns with regard to all patronage dividends regardless of amounts. The revised section 6044 requires reporting with respect to all payments of \$10 or more during the calendar year and, in addition, reflects the provisions of the new subchapter T of chapter 1 (relating to the tax treatment of cooperatives and patrons) which is added to the code by section 17 of the bill.

Section 6044. Returns Regarding Patronage Dividends

(a) Requirement of reporting.--Subsection (a)(1) provides that, except as otherwise provided in section 6044, every cooperative to which part I of subchapter T of chapter 1 applies which makes payments of amounts described in subsection (b) aggregating \$10 or more to any person during any calendar year, is to file an information return with respect to such payments. Such return is to be made according to the forms or regulations prescribed by the Secretary of the Treasury or his delegate and is to set forth the aggregate amount of the payments and the name and address of the person to whom paid.

Subsection (a)(2) provides that the Secretary of the Treasury or his delegate may require information returns regarding payments of amounts described in subsection (b) where such payments aggregate less than \$10 to any person during any calendar year.

(b) Amounts subject to reporting.--Subsection (b)(1) provides that the amounts with respect to which reporting is required by subsection (a) are (except as otherwise provided by sec. 6044): (A) Patronage dividends paid in cash, qualified written notices of allocation, or other property (except nonqualified written notices of allocation); (B) in the case of an exempt farmers' cooperative, amounts described in section 1382(c)(2)(A) (relating to amounts paid with respect to nonpatronage earnings) which are paid in money, qualified written notices or allocation, or other property (except nonqualified written notices of allocation); (C) amounts described in section 1382(b)(2) paid in redemption of nonqualified written notices of allocation which were previously paid as patronage dividends; and (D) amounts described in section 1382(c)(2)(B) paid by an exempt farmers' cooperative in redemption of nonqualified written notices of allocation previously paid with respect to nonpatronage earnings. The cooperative is required to report these amounts even though it must pay tax with respect to them because they were not paid within the prescribed time limits.

Subsection (b)(2) provides that information reporting shall not be required, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, with respect to any payment (A) by a foreign corporation, or (B) to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens.

(c) Exemption for certain consumer cooperatives.--Subsection (c) of the new section 6044 provides that a cooperative which the Secretary of the Treasury or his delegate determines is primarily

engaged in selling at retail goods or services of a type that are generally for personal, living, or family use is to be granted exemption from the requirements of information reporting imposed by subsection (a) upon application for such exemption to the Secretary of the Treasury or his delegate. The application for exemption is to be made in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

(d) Determination of amount paid.--Subsection (d) provides that for purposes of section 6044, in determining the amount of any payment, property (other than a written notice of allocation) is to be taken into account at its fair market value, and a qualified written notice of allocation is to be taken into account at its stated dollar amount.

(e) Statements to be furnished to persons with respect to whom information is furnished.--Subsection (e) provides that every cooperative making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing (1) the name and address of the cooperative making the return, and (2) the aggregate amount of payments to the person as shown on the return. This written statement is to be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. However, no statement is required to be furnished to any person under this subsection if the aggregate amount of payments to the person as shown on the return made under subsection (a)(1) is less than \$10.

## Section 19

### Reporting of Interest, Dividend, and Patronage Dividend Payments of \$10 or More During a Year (Continued)

(c) Returns regarding payments of interest.--Subsection (c) of the new section 19 amends subpart B of part III of subchapter A of chapter 61 of the code (relating to information concerning transactions with other persons) by adding a new section 6049 to such subpart B.

#### Section 6049. Returns Regarding Payments of Interest

(a) Requirement of reporting.--Paragraph (1) of new section 6049(a) requires every person making payments of interest (as defined in subsec. (b)) aggregating \$10 or more to any other person during any calendar year to report such payments. In addition, paragraph (1) requires persons receiving payments of interest (as defined in

subsec. (b)) in the capacity of nominee to report payments by them aggregating \$10 or more during any calendar year to any other person with respect to such interest so received. The return to be filed under paragraph (1) is to be made according to the forms or regulations prescribed by the Secretary of the Treasury or his delegate and is to set forth the name and address of the person to whom the payments were made and the aggregate amount of such payments.

Paragraphs (2) and (3) restate, in general, provisions of existing law (sec. 6041(c)). Paragraph (2) provides that, when required by the Secretary of the Treasury or his delegate, every person who makes payments of interest (as defined in subsec. (b)) aggregating less than \$10 to any other person during any calendar year is to make a return setting forth the aggregate amount of such payments and the name and address of the person to whom paid. Under existing law the Secretary of the Treasury or his delegate has discretionary authority to require every corporation making payments of interest, regardless of amounts, to report the amounts so paid. Paragraph (2) limits the discretionary authority of the Secretary of the Treasury or his delegate to require information returns, with respect to payments of interest defined in subsection (b), to such payments to another person aggregating less than \$10 during a calendar year. Payments aggregating \$10 or more during the year must be reported under subsection (a)(1).

Paragraph (3) provides that, when required by the Secretary of the Treasury or his delegate, every corporation making payments, regardless of amounts, of interest other than interest as defined in subsection (b), is to make a return according to the forms or regulations prescribed by the Secretary of the Treasury or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(b) Interest defined.--Subsection (b)(1) of the new section 6049 defines the term "interest" for purposes of subsections (a) (1) and (2) of such section to mean:

(A) Interest on evidences of indebtedness (including bonds, debentures, notes, and certificates) issued by a corporation in registered form, and to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, interest on other evidences of indebtedness issued by a corporation of a type offered by corporations to the public. For this purpose, an instrument is in registered form if its transfer must be effected by the surrender of the old instrument and either the reissuance of the old instrument by the corporation to the new holder or the issuance by the corporation of a new

instrument to the new holder. If an instrument can be transferred by endorsement it is not in registered form even though a list is maintained by the corporation of such instruments issued by it.

As used in subsection (b)(1) the term "of a type offered by corporations to the public" refers to a type of instrument. In determining whether a particular instrument comes within the scope of the term it is immaterial whether the particular instrument (or any instrument of the issue of which it is a part) actually was offered to the public so long as it is of a type which is offered by corporations to the public. Therefore, in a case where an entire issue is offered by a corporation only to its shareholders, the instruments come within the scope of the term if they are of a type offered by corporations to the public. The term does not have reference to instruments of a type offered by corporations only to other corporations. Coupon bonds issued by a corporation are an example of an evidence of indebtedness with respect to which the Secretary of the Treasury or his delegate may require information reporting under subsections (a) (1) and (2).

(B) Interest on deposits with persons carrying on the banking business. This includes interest paid or credited by any individual or organization carrying on the banking business.

(C) Amounts (whether or not designated as interest) paid or credited by a mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. This includes interest paid with respect to face amount certificates.

(D) Interest on amounts held by an insurance company under an agreement to pay interest thereon. This subparagraph includes interest paid with respect to policy dividends held by an insurance company, and interest on the proceeds of an insurance policy held by an insurer under an agreement to pay interest thereon. This paragraph does not apply to amounts which represent the so-called "interest element" in the case of annuity or installment payments under a life insurance or endowment contract.

(E) Interest on deposits with stockbrokers and dealers in securities. This subparagraph includes interest on deposits with stockbrokers, bondbrokers, and other persons engaged in the business of dealing in securities.

Subsection (b)(2) provides that, for purposes of subsection (a) (1) and (2), the term "interest" does not include:

(A) Interest on obligations described in section 103(a) (1) or (3) of the code (relating to obligations of a State, etc.);

(B) To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any amount paid by or to a foreign corporation, a nonresident alien, or a partnership not engaged in trade or business in the United States and composed in whole or in part of nonresident aliens; and

(C) Any amount on which the person making payment is required to deduct and withhold a tax under section 1451 (relating to tax-free covenant bonds) or would be so required but for section 1451(d) (relating to benefit of personal exemptions). Thus, the payment of interest on a tax-free covenant bond issued before January 1, 1934, is not required to be reported under subsection (a) (1) and (2). The fact that the person entitled to receive such interest files with the payer a signed notice in writing, as provided in section 1451(d) of the 1954 Code, claiming benefit of the deduction for personal exemptions provided in section 151 of the code, thereby relieving the payer of the duty to withhold a tax under section 1451(a), does not abrogate the exception provided by this subparagraph.

(c) Statements to be furnished to persons with respect to whom information is furnished.--Subsection (c) of the new section 6042 requires every person making a return under subsection (a)(1) to furnish to each person whose name is set forth in such return a written statement showing (1) the name and address of the person making the return, and (2) the aggregate amount paid to the person as shown on the return. Such written statement is to be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made. However, no statement is required to be furnished to any person under this subsection if the aggregate amount of payments to the person as shown on the return made under subsection (a)(1) is less than \$10.

## Section 19

### Reporting of Interest, Dividend, and Patronage Dividend Payments of \$10 or More During a Year (Continued)

(d) Penalties for failure to file information returns.--Subsection (d) of section 19 of the bill amends section 6652 of the 1954 Code

(relating to failure to file information returns) to provide a new civil penalty for failure to file an information return with respect to payments aggregating \$10 or more, respectively, of dividends, interest, or patronage dividends as required by the amendments made to the code by subsections (a), (b), and (c) of the new section 19, and to reflect the other amendments with respect to information reporting made by such subsections.

#### Section 6652. Failure to File Certain Information Returns

(a) Returns relating to payments of dividends, interest, and patronage dividends.--Subsection (a) provides a new penalty of \$10 per statement for each failure to file a statement of the aggregate amount of payments to another person, as required by section 6042(a)(1) (relating to payments of dividends aggregating \$10 or more), section 6044(a)(1) (relating to payments of patronage dividends aggregating \$10 or more), or section 6049(a)(1) (relating to payments of interest aggregating \$10 or more), on the date prescribed therefor (determined with regard to any extension of time for filing). No penalty is to be imposed, however, with respect to a failure to file a statement, if it is shown by the payer that the failure was due to reasonable cause and not to willful neglect. The penalty is to be paid, upon notice and demand by the Secretary of the Treasury or his delegate and in the same manner as tax, by the person failing to so file the statement. The total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000.

(b) Other returns.--Subsection (b) retains the penalty provided under existing section 6652 for failures to file information returns not covered by the new \$10 penalty in subsection (a). Subsection (b) provides a penalty of \$1 for each failure to file a statement, at the proper time, of a payment to another person required under authority of section 6041 (relating to certain information at source), section 6042(a)(2) (relating to payments of dividends aggregating less than \$10), section 6044(a)(2) (relating to payments of patronage dividends aggregating less than \$10), section 6049(a)(2) (relating to payments of interest aggregating less than \$10), section 6049(a)(3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld). The penalty is to be imposed, with respect to each failure, unless it is shown that the failure was due to reasonable cause and not to willful neglect. The penalty is to be paid, upon notice and demand by the Secretary of the Treasury or his delegate and in the same manner as tax, by the person failing to so file the statement. The total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed \$1,000.

## Section 19

# Reporting of Interest, Dividend, and Patronage Dividend Payments of \$10 or More During a Year (Continued)

(e) Penalty for failure to furnish statements to persons with respect to whom returns are filed.--Subsection (e) of the new section 19 amends subchapter B of chapter 68 (relating to assessable penalties) by adding to such subchapter a new section 6678 to provide civil penalties for failure to furnish statements to persons to whom dividends, patronage dividends, or interest are paid as required by the amendments made to the code by subsections (a), (b), and (c) of the new section 19.

### Section 6678. Failure to Furnish Certain Statements

Section 6678 provides a penalty of \$10 for each failure to furnish a statement under section 6042(c), 6044(e), or 6049(c) on the date prescribed therefor to a person with respect to whom an information return has been made under section 6042(a)(1), 6044(a)(1), or 6049(a)(1), respectively. The penalty is to be imposed unless it is shown that such failure was due to reasonable cause and not to willful neglect. The penalty is to be paid, upon notice and demand by the Secretary of the Treasury or his delegate and in the same manner as tax, by the person failing to so furnish the statement. The total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$25,000.

(f) Technical amendments.--Subsection (f) of the new section 19 amends section 6041 of the code, relating to information at source, to reflect the amendments made to the code by subsections (a), (b), and (c) of the new section 19.

Paragraph (1) amends section 6041(a) of the code (relating to information returns with respect to payments of \$600 or more) in order to exclude from the application of such section payments of dividends, patronage dividends, and interest aggregating, respectively, \$10 or more during any calendar year to another person, and to exclude from such application other payments of dividends, patronage dividends, and interest with respect to which the Secretary of the Treasury or his delegate requires information returns under the authority of sections 6042(a)(2), 6044(a)(2), 6045, 6049(a)(2), and 6049(a)(3) as amended, or added to the code, by your committee's amendment.

Paragraph (2) further amends section 6041 of the code by striking out subsection (c) thereof (relating to payments of interest by



corporations) since the provisions of such subsection are contained in the new section 6049 added to the code by subsection (c) of section 19 of the bill.

(g) Clerical amendments.--Subsection (g) of section 19 of the bill makes certain clerical amendments to the code to reflect the other amendments made to such code by section 19 of the bill.

(h) Effective date.--Subsection (h) of section 19 of the bill provides effective dates for the application of the provisions of such section 19 with respect to payments of dividends, interest, and patronage dividends.

Paragraph (1) provides that, except as provided in paragraph (2), the provisions of section 19 of the bill are to apply with respect to payments of dividends and interest on or after January 1, 1963.

Paragraph (2) provides that the provisions of section 19 of the bill are to apply with respect to payments of amounts described in section 6044(b) of the code (relating to returns regarding patronage dividends) on or after January 1, 1963, with respect to patronage occurring on or after the first day of the first taxable year of the cooperative beginning on or after January 1, 1963.

